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Examined

File No. S. Bij 1/49

Legal DEPARTMENT

A BRANCH

Subject:— Civil Suit No. 275 of 1947.

1) Begahebi Kom Ahmedsaheb Patel } - Plff.
and others ... }

versus

1) The Province of Bombay } - Defts.
and another ... }

for a declaration that order of the Collector of Bijapur, No. N.T.P. 1016, dt. 15th Dec. is illegal and ultra vires and for the Consequential injunction and also for possession of the Suit-lands in case the plaintiff are deprived of possession in pursuance of the Revenue Authorities orders.

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Vs.

Province of Bombay and another.

For a declaration that the order of the collector of Bijapur is illegal and ultra vires and for the consequen injunction and also for possession of the suit lands in case of the plffs. are deprived of possession in pursuance of the Revenue Authorities Order.

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Information as required by Rule 118(c) of Law Officers Rules.

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The facts of the case are as below:-

One Aminsaheb Makkusaheb was the O-16-0 R.F. Patil of Ittangihal holding Service Watan lands S.Nos. 202, 203 (A & B) 258 and 259 and also Khalsa lands S.Nos. 194 and 199 and one house at Ittangihal (Page 135 File I) and page 11 and 13 File III). After his death in 1904 or about that time his widow - Begambi-- Plaintiff No.1 succeeded him and her name - was duly entered against the Watan lands and the - Patilki right of service. In 1907 she adopted one - Ladlesaheb Hajisaheb, Subsequently there arose a - dispute between Begambi and Ladlesa, which was referred to the arbitration of Panchas. The latter made an - award on the 12th of November 1907(page 13 File II) recognising Ladlesaheb as the owner of the Watan - property and also of the right of Patilki services, One land S.No.258(Inam Class VI-B) was given to - Begambi for her life time for maintenance. Ladlesaheb obtained a Decree in terms of the award in the - Civil Suit No.586 of 1907(Page 49 to 53 File III). Upon the strength of the Decree passed in that Suit the - name of Ladlesaheb was entered in the Patilki Watan - Register and to all Watan lands and two Khalasa lands with the consent of Begambi(Page 17 File II)as - per Prant Officer's Order of 1908(page 15 File II). - S.No.258 was given to Begambi for life time for her - maintenance. In or about 1913 all the remaining lands were also transferred by Ladlesaheb to Begambi for her maintenance(Page 15, 16 File III). On 22-7-1922 - Begambi transferred the four Patilki Watan lands by way of usufructory mortgage to her brother Lalsaheb Hajisaheb(Page 35 File I). A dispute under record of rights then arose and the Mamlatdar ordered in 1922

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the entry of the name of Lalsaheb in record of rights and referred Ladlesaheb to the Civil Court(page 16 to 18 File I).

Begambi then applied to the Prant - Officer on 12-1-1926 (page 19 File I) for the entry of her name in the Patilki Waten Register in plave of Ladlesa. He request was refused by the Prant Officer on 13-4-1926 (Page 23 File I) and the appeal thereon was also dismissed by the Collector on 26-6-1927(page 29 File I). Begambi gifted the Watan lands together with the 0-16-0 right of service to her brother Lalasaheb by a duly registered deed(page 31 to 33 File I). Ladlesaheb beinf agrieved approach the Prant Officer on 14-12-1928 (Page 121 File I) for restoration of the Watan lands from Lalasaheb. But the Prant Officer ordered on 11-6-1929 (Page 170 File I) that no restoration could be ordered during the life time of Begambi. Ladlesaheb died in 1934. He was performing the Patilki service from 1907 right upto his death. His son Aminsaheb (Deft: No.1) was then ordered to be the S.R.W. by the Prant Officer in his order of 14-9-1934(Note: in the Pali Register at page 29 File II).

About the year 1938 Begambi instituted a Civil Suit for declaration that Amin Aminsaheb Ladlesab Deft: No.1 had no right to the Patilki service and that she had never adopted Ladlesaheb and that no adoption could be valid under Mahomedan Law. The Suit was - dismissed by the Lower Court and it was decided in the second appeal No.652 of 1941(page 7 File II) by the - High Court on 21-9-1942 to the following effects:- "Although an adoption is not recognised under the - Mahomedan as a mode of filiation, a special family custom is not ruled out by that law". Thus the High Court held that Ladlesaheb acquired the right to the Watan property and service, and that under the terms of

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of the Decree of 1907 Begambi is estopped from - claiming Watan property and service to herself and further that she obtained no interest in the - Watan property on the strength of this High Court decision Aminsaheb applied to the Prant Officer on 6-8-1943 (Page 1 File II) for restoration of the Watan lands. The Prant Officer refused on 11-11-1943 (Pgae 91 File II) the request of the applicant who then approached the Collector in appeal. In view of the High Court decision the Collector held in appeal on 1-12-1944 (page 55 File III) that from the date of the award decree Begambi ceased to have any - right in the Watan property including S.No.258 guven to her for her maintenance during her life time; and as such she being a non-watandar shek had no interest to transfer the property to anybody else subsequent to this award decree. Any transfer by way of - mortgage or gift, fictitious or real, became inoperative and the alinee cannot set up a claim of having got the property from a Watandar. This - does not in effect mean the acceptance of the - adoption, because the right of the adopted son originate from the award decree rather than from the adoption. Restoration was therefore ordered. Against this order Begambi and Lalsaheb her brother - approached the Bombay Revenue Tribunal in appeal. The Tribunal in its decision of 8-3-1946 (Page 5 File IV) accepted the principle of Ladlesaheb having acquired the right of service and Watan property by the award decree and held that the validity or otherwise of the adoption (may be inadmissible) under the Mahomedan Law was not open for its consideration. In acvordance with the terms of the award decree - Ladlesaheb was recognised as the Sole Representative

Watandar and Watan lands were entered in his name ; and that his natural born son Aminsaheb Deft: No.1 is entitled to his father's right of service and - Watan lands. After the lands and the right of service had once been entered in the name of Ladlesaheb, - Begambi had no right to alienate the lands. The - Collector's orders of 1944 were upheld.

In persuance of these Bombay Tribunal' orders the Mamlatdar ordered on 7-2-1947 (Page 47 File IV) the delivery of the four Watan lands to - Aminsaheb. The lands were actually given into the possession of Aminsaheb on 12-2-1947(page see - Mamlatdar's report page 73 File IV). It is alleged in the plaint (para 9) that Plaintiff No.1 h been prosecuted for having objucted to the Mamlatdar at the time of deliverying the lands to Defendent No.1. This fact has not been supported by any - refererence which is forth coming in the papers of the case. The Mamlatdar's action in handing over - possession of the Suit lands to Aminsaheb is - perfectly legal in view of the orders issued by his superior officers, and his action is prosecuting the objector is not illegal.

The Suit may therefore be defended on the grounds discussed above.

Camp Wadwadgi,
23-1-1948.

Prant Officer, Bijapur Dn.,
Bijapur.

23/1

k.

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Bijapur Civil Suit No.~~245~~ of 1947.

The suit involves a claim in respect of Patilki service lands in the village of Ittangihal, Taluka Bijapur. One Aminsaheb Makkusaheb was the representative Vatandar Patil of the village and held the lands as such. On his death in 1904, his widow Begumbi (plaintiff No. 1 in this case) succeeded to the Vatan lands and the Patilki service. She then adopted one Ladlesaheb Hajisaheb, father of defendant No.1. Subsequently, certain disputes arose between them over the Vatan lands which were submitted to private arbitration. In 1907, Ladlesaheb obtained an award decree which recognised his claim to the Vatan lands and the right to perform the Patilki service. For some reasons, however, possession of the Vatan lands remained with plaintiff No. 1 who alienated them by a mortgage in 1922 and again by way of gift in 1927. Ladlesaheb 's objections to the alienations were overruled by the Revenue authorities on the ground that they were good during plaintiff No.1's life time.

2. Ladlesaheb performed the Patilki service till his death in 1934. After him, the name of his son, Aminsaheb, defendant No.1 was entered as the sole representative Vatandar in the Vattan register. In December 1938, plaintiff No.1 filed a suit against the defendant No.1 for a declaration that the latter had no right to perform the Patilki service, that she had never adopted Ladlesaheb and that if she had, the adoption was invalid under the Mahomedan law. That suit was dismissed by the lower court, holding that the award decree of 1907 was binding on plaintiff No.1, conferred a heritable right to the Patilki Service watan on Ladlesaheb and operated as res-judicata. That decree was confirmed by the High Court in second appeal No. 652 of 1941. On the strength of that decree, the

defendant No.1 applied to the Revenue authorities for restoration of the possession of the Watan lands. The application was rejected by the Prant Officer but allowed by the Collector, whose order was confirmed by the Bombay Revenue Tribunal. The plaintiff has therefore come to court.

3. The plaintiffs repeat the old argument that Ladlesaheb had never been adopted by plaintiff No. 1, that the award decree was obtained by fraud and that they have become owners of the suit land by adverse possession. So far as the award decree is concerned, the rights of defendant No.1 are concluded by the High Court's decree in second appeal No.652 of 1941. It is not, therefore, open to the plaintiffs to contend in this litigation that the award decree is not binding on them. The plea of adverse possession will also not succeed. The suit lands are service lands and if they have gone into the ownership or beneficiary possession of a person who is not the officiator or a Watandar of the same Watan, the Collector has, under the Watan Act, 1874, a statutory power to resume the lands by egicting the persons in wrongful possession and thereupon, the lands revert to the Watan. The Collr. is not obliged to file a suit for the purpose of eviction, ~~The possession can become adverse, if at all only after the Collector has exercised his powers under the Watan Act for resumption of the land.~~ and no period of limitation is prescribed for an order of this nature under the Watan Act This point has been made clear in paragraph 5 of the brief. The technical defences of jurisdiction and limitation are also available.

4. Sanction may be accorded to the defence of the suit on the lines of the accompanying brief. The Draft written Statement is put up for approval.

12-4-48

~~R L A~~ A.A.R. The brief as recast may be approved R.K. 10/4

RLA 7/4/48

No. 3497
dt. 12-4-48

R.L.A. 12.4.48
Secy. R.D.

defendant No.1 applied to the Revenue authorities for restoration of the possession of the Watan lands. The application was rejected by the Prant Officer but allowed by the Collector, whose order was confirmed by the Bombay Revenue Tribunal. The plaintiff has therefore come to court.

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4. Sanction may be accorded to the defence of the suit on the lines of the accompanying brief. The Draft written Statement is put up for approval.

7/4/48

12-4-48

The brief as read may be approved

R.L.A. 10/4

O.S. 3497
12-4-48

R.L.A.
Secy. R.D. 12.4.48

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WRITTEN STATEMENT.

In the Court of the Civil Judge, Senior Division, Bijapur.

Suit No. 275 of 1947.

1. Begambi kom Aminsaheb Patel, Muslim and others. Plaintiffs.

Vs.

The Province of Bombay and another. Defendants.

The following is the Written Statement of Defendant No.(2) (Province of Bombay) :-

1. The court's jurisdiction to entertain the suit is barred under section 4(a) of the Bombay Revenue Jurisdiction Act, 1874.

2. The suit is time-barred under Article 14 of Schedule I to the Indian Limitation Act.

3. The plaintiffs are no longer in possession of the suit lands. The possession of the lands has been resumed from them and restored to defendant No.1 on 12th February 1947. It is, therefore, submitted that the suit for a mere declaration and consequential relief does not lie. The plaintiff must principally ask for possession of the land, after paying necessary Court fees.

4. The allegations in paragraphs 3 and 4 of the plaint are incorrect and hence denied. It is submitted that the right of the defendant No.1 over the watan lands and the Patilki service has been confirmed by the High Court in second appeal No.652 of 1941 to which the plaintiff No.1 was a party. The award decree of 1907 conferred a heritable right to the Patilki service Watan on Ladlesaheb and was held binding on the plaintiff by the High Court. The defendant No.1 who is son of Ladlesaheb was, therefore, entitled to both the lands and the right of Patilki service. The plaintiffs are now no longer entitled to question the award decree of 1907.

5. The plaintiffs' allegations regarding adverse possession of the suit lands are denied. The lands appertain to Patilki service and are governed by Watan Act 3 of 1874. As they had gone into the possession of persons who were not performing the Patilki service, they were liable to be resumed by the

Collector at any time under sections 11,11A of the Watan Act. The Collector is not obliged to file a suit for resumption of the land and eviction of the plaintiffs. No period of limitation is prescribed for taking action under sections 11,11A and 12 of the Watan Act. It is therefore submitted that the question of adverse possession does not arise in this case.

6. The Collector's order which is confirmed in Appeal by the Revenue Tribunal is correct and lawful.

7. It is therefore submitted that the suit fails and must be dismissed with costs.

Dated, 1948.

District Government Pleader,
Bijapur.

I, , District Government Pleader, Bijapur, do hereby verify that what is stated above in pragraphs 1 to 7 above is true to my information and belief. This verification is signed by me at Bijapur this day of 1948.

District Government Pleader,
Bijapur.

JSA.

Civil Suit No.275 of 1947. 43

Issues.

1. Whether the award decree bars the present suit as res judicata as contended in the written statement ?
2. Whether the suit is barred under section 4 of Bombay Revenue Jurisdiction Act ?
3. Whether the suit is in time ?
4. Whether the award decree was obtained fraudulently ?
5. Whether the award decree is binding on the plaintiff ?
6. Whether the plaintiff was in possession of the suit property as the date of suit ?
7. Whether it was juridical possession ?
8. Whether the plaintiffs have perfected their title to the suit property by advrse possession ?
9. Whether any cause of action has accrued to plff ?
10. Whether the suit for a bare declaration and consequential relief is tenable ?
11. Whether the deft no.1 is entitled to possession pursuant to the order of the Revenue authorities ?
12. Whether the plaintiff is entitled to possession ?
13. Whether the proper Court fee is paid . ?
14. Whether the plainitffs are the heirs of Aminsaheb, the husband of Begumbi ?
15. If so, is the claim in this behalf time-barred ?

16-6-1948. Sd/-

Civil Judge Senior Division,
Bijapur.

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Exhibit.No.44. Civil Suit No.275 of 1947.

In the Court of the Civil Judge,Sr.Dn.,Bijapur.

1. Begambi plff.

Vs.

1. Aminsaheb and others. defts.

Herein the pleader for the plaintiff beg submit as under:-

The plaintiffs have brought this suit for a declaration that certain order passed by the Revenue authorities are ultra vires and for injunction. During the pendency of the suit plaintiff No. 1 has died . The other plaintiffs had joined the suit as alienees from plaintiff No.1. After plaintiff No. 1's death her alienation ceases to have any effect. The other plaintiffs who are also her heirs can claim the property in their own right which they cannot do in this suit. The suit is likely to fail on technical grounds. It is therefore prayed that plaintiffs be allowed to withdraw from this suit with liberty to bring a fresh suit on the same cause of action.

30-6-1948. Sd.S.A.Tanksali.
Pleader.

For objections.

Sd.
30/6/48. C.J.Sr.Dn.

I object to the withdrawal at this late stage,but if it is allowed the costs of the Government should be granted and the said order should contain the condition that the costs should be paid before the institution of the next suit.

Sd. K.R.Rao.
2-7-1948. D.G.P.Bijapur.

I object to the withdrawal of the suit. There is no formal defect as required and alleged by plaintiff. The plaint shows that the plaintiffs 2 to 5 put their claim in their own right(or plaintiffs 2 to 5 through Lalsa) as the the residuary heirs of the original holder Aminsa. The ground for withdrawal certainly is not correct in fact. If allowed payment of costs of defendants be made a condition precedent

for bring a fresh suit.

Sd. M.P.Ankalikar.
for defent No. 1.
for V.N.Jeehi.

Order.

Permitted to withdraw the suit with liberty to bring a fresh suit on the same cause of action. The new suit to be brought within 3 months and on payment of defendants costs.

2-7-1948. Sd.
Civil Judge, Sr.Dn., Bijapur.

"True Copy".

District Govt. Pleader
Bijapur

Suits :

Bijapur.

For a declaration that the order of the Collector of Bijapur, No. W.T.P. 1016, dated 1st December 1944, is illegal and *ultra vires* and for consequential injunction and also for possession of the suit lands in case the Plaintiffs are deprived of possession in pursuance of the Revenue Authorities' Order.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 3640-A.

Bombay Castle, 14th April 1948.

Letter from the Collector of Bijapur, No. LAW. 182, dated the 2nd February 1948—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 275 of 1947.

Begambi *kom* Aminsaheb Patel and others ... Plaintiffs;

versus

The Province of Bombay and another ... ... Defendants.

Endorsement by the Commissioner, Southern Division, No. LST. 388, dated the 23rd February 1948—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, No. 3640, dated the 14th April 1948—Forwarding a copy of the brief and 2 copies of the written statement with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

original

G. R. No. 3640-A, L. D., dated the 14th April 1948.

To

* The Revenue Department,
* The Commissioner, Southern Division,
* The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

* With a copy of the brief.

No. of 1948

Copy forwarded for information and guidance to

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BIJAPUR CIVIL SUIT NO. 275 OF 1947.

File III, p. 55.

The suit is filed by one Begambi *kom* Aminsaheb Makkusaheb and others for a declaration that the order of the Collector of Bijapur, No. W.T.P. 1016, dated the 1st December 1944, directing the plaintiff No. 1 to be evicted from the suit lands and ordering the possession of the lands to be restored to defendant No. 1 is illegal and *ultra vires* and for a consequential injunction restraining the defendants from disturbing the plaintiffs' possession; and also for possession of the suit lands in case the plaintiffs are deprived of possession in pursuance of the Revenue authorities' Order.

2. One Aminsaheb Makkusaheb, the representative Watandar Patil of the village of Ittangihal, taluka Bijapur, was the holder of service Watan lands bearing Survey Nos. 202, 203-A, 203-B, 258 and 259 He also held Khalsa lands, Survey Nos. 194 and 199. On his death in or about 1904, he was succeeded by his widow Begambi, plaintiff No. 1, whose name was entered against the Watan lands and the right to perform Patilki service. In 1907, she adopted one Ladlesaheb Hajisaheb, father of defendant No. 1. Subsequently, there arose a dispute which was referred to

File II, p. 13.

private arbitration. On 12th November 1907, the arbitrators gave an award which recognised Ladlesaheb as the adopted son of Begambi and the owner of the Watan and Khalsa lands and of the right of Patilki service. One land, Survey No. 258, was directed to be left with Begambi for her maintenance during her life-time. Begambi as well as Ladlesaheb agreed

File III, p. 53.

to abide by this decision and in Bijapur Civil Suit No. 586 of 1907, Ladlesaheb obtained a decree in the terms of the award. On the strength of the award decree and with the

File II, pp. 15-17.
File II.

consent of Begambi the Watan and Khalsa lands were entered in the name of Ladlesaheb. Survey No. 258 was given to Begambi for her maintenance. In or about 1930 all the remaining lands were handed over by Ladlesaheb to Begambi for her maintenance and the record shows that since then right up to 12th February 1947 the Watan lands were in possession of Begambi or her alienees.

File I, p. 35.

3. On 22nd July 1922, Begambi gave the four Watan lands in usufructory mortgage to her brother Lalsaheb, the husband and father respectively of plaintiffs Nos. 2 and 3. On 27th June 1927, Begambi again executed a deed of Gift in favour of her brother Lalsaheb transferring to him all the Watan lands and the rights of Patilki service. Ladlesaheb

do. p. 37.

objected to this transfer and applied to the Prant Officer for restoration of possession of the Watan lands to him but the

do. p. 170.

Prant Officer refused his request on the ground that the alienation was good during the life-time of Begambi but that the alienation of the Patilki service right would not be recognised.

4. Ladlesaheb died in 1934. He performed the Patilki service till his death and after him, the name of his son Aminsaheb, defendant No. 1, was entered as the sole representative

File II, p. 29.

Watandar in the Watan register.

5. In December 1938, Begambi filed a suit against the present defendant No. 1 for a declaration that the latter had no right to perform the Patilki service, that she had never adopted Ladlesaheb and that if she had, the adoption was invalid under the Mahomedan law. Both the lower Courts held that the decree on the award of 1907 was binding on Begambi and conferred a heritable right to the Patilki service Watan on Ladlesaheb and operated as *res judicata*. Accordingly the suit was dismissed and that result was

do. p. 7.

confirmed by the High Court in Second Appeal No. 652 of 1941.

6. On the strength of the High Court decree, the defendant No. 1 applied to the Prant Officer on 5th August 1943 for

do. p. 1.

restoration of the Watan lands. The Prant Officer refused his request but in appeal, the Collector relying upon the High

File III, p. 55.

Court's decree, ordered restoration of the Watan land to the defendant No. 1. Begambi and Lal Saheb appealed to the

Bombay Revenue Tribunal but the Tribunal upheld the Collector's order and dismissed the appeal on 8th March 1948. In pursuance of the Tribunal's order for the possession of the Watan lands, the same were restored to the defendant No. 1 on 12th February 1947. File II, p. 39.

7. On 7th January 1947, the plaintiffs gave a notice of suit under section 80 of the Civil Procedure Code, and thereafter filed the suit in the Court of the Civil Judge, Senior Division, Bijapur.

Grounds of Defence.

1. *No jurisdiction.*—It should be contended that the Court has no jurisdiction to entertain this suit under paragraphs 1, 3 and 4 of clause (*a*) of section 4 of the Bombay Revenue Jurisdiction Act, 1876. The plaintiffs ask the Court to declare that the Collector's order directing restoration of the Watan lands to defendant No. 1 is invalid and pray for a consequential injunction. The suit thus involves the claim against the Crown relating to Patilki Watan lands which appertain to the office of a hereditary officer appointed under Bombay Act III of 1874. The suit is therefore barred under the 1st paragraph of section 4(*a*). The declaratory and consequential reliefs claimed in the plaint necessarily involve the setting aside or avoiding of the Collector's order dated 1st December 1944. The suit is, therefore, also barred under paragraph 3. Lastly this is also a claim against the Crown relating to lands declared to be held for service and is, therefore, barred under the 4th paragraph of section 4(*a*) (Khangouda *v.* Secretary of State, 38 Bom. L. R. 1308; Mallappa *v.* Tukko, 39 Bom. L. R. 288).

2. *Limitation.*—As stated before, the plaintiffs claim relief in this suit, the grant whereof would necessarily involve the setting aside or avoiding of the Collector's order dated 1st December 1944. That order was passed by the Collector in his official capacity and is *intra vires* and lawful under the Bombay Hereditary Offices Act (III of 1874). The suit is, therefore, time-barred under Article 14 of Schedule I to the Indian Limitation Act. Under that Article read with section 15(*2*) of the Act, the time begins to run from the date of the order itself and the suit should, therefore, have been filed within 1 year and 2 months from the date thereof. As it is filed after that date, it is obviously time-barred. The plaintiffs will not be able to avoid the bar of limitation by excluding the time taken in the appeal before the Bombay Revenue Tribunal. It is settled that in computing the period of limitation under Article 14 the time spent in such appeal cannot be excluded (Ganesh *v.* Secretary of State, I. L. R. 44 Bom. 451).

3. *Frame of Suit and Court fees.*—It should also be contended that the suit for a declaration and consequential relief is not maintainable. The plaintiffs are no longer in possession of the suit lands. The possession thereof was restored to defendant No. 1 on 12th February 1947. Consequently the suit for mere declaration will not lie and it cannot proceed unless and until the plaintiffs amend the plaint and ask for possession of the lands after paying the requisite Court fees.

4. *Merits.*—On merits also, the plaintiffs are not entitled to any relief. Their case as stated in the plaint is that the award decree of 1907 against plaintiff No. 1 was the result of a fraud committed by Ladlesaheb, that the plaintiff No. 1 had never adopted Ladlesaheb, that the adoption was invalid because the parties are governed by Mahomedan law which does not recognise adoption and that despite the award decree, the plaintiffs have remained in adverse possession of the Watan lands and have therefore acquired title by adverse possession for more than 12 years. Now, so far as the Watan lands and the Patilki service are concerned, the rights of the defendant No. 1 have been confirmed by the High Court's decree in Second Appeal No. 652 of 1941 in which it was held in effect that the award decree of 1907 was binding on

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Begambi and conferred a heritable right to the Patilki service Watan on Ladlesaheb and operated as *res judicata* against the claim of plaintiff No. 1. The result of that litigation to which the plaintiff No. 1 was a party, is binding on her and cannot be reopened in this case. The award decree recognised Ladlesaheb's claim to the Watan lands and the Patilki service and that right was confirmed by the High Court. Defendant No. 1 who is the son of Ladlesaheb was therefore entitled to both the lands and the right of service. The plaintiff No. 1 had no right to alienate lands after they had been entered in the name of Ladlesaheb. Since the Patilki service had been performed by Ladlesaheb up to his death in 1934 and after him, by his son, the latter is entitled to the restoration of Watan lands and consequently, the order of the Collector was quite proper and lawful.

5. *Adverse possession.*—Perhaps the plaintiffs' strongest line of argument will be that despite the award decree, they have been in adverse possession of the Watan lands since 1907, that their adverse possession has now ripened into title and consequently, the lands cannot be resumed from them and restored to defendant No. 1. This argument will not be tenable. The lands in suit are Patilki service lands governed by the Bombay Hereditary Offices Act of 1874. If such lands have passed without the sanction of Government into the ownership of beneficial possession of any person other than the officiator for the time being or into the ownership or beneficial possession of a person not a Watandar of the same Watan, the Collector is under a statutory duty under sections 11, 11A and 12 of the Watan Act to declare such alienations to be null and void, to summarily resume possession of the lands, and if necessary, to summarily evict any person wrongfully in possession of the land. Begambi was in possession of the lands with the consent of her adopted son. She then unauthorisedly alienated the Watan lands which thereupon went into the possession of persons who were neither officiators nor Watandars. The Collector was therefore right in ordering resumption of the suit lands and eviction of the plaintiffs under sections 11A and 12. It was in fact obligatory on him to do so because the provisions of those sections are mandatory and leave no option to the Collector but to make such an order. Begambi and her alienee's possession of the Watan land was always liable of being put an end to by the Collector choosing to exercise his statutory powers of resumption and summary eviction. No period of limitation is prescribed for taking action under sections 11, 11A and 12. The Collector is not obliged to file a suit against her for the purpose of eviction. The question of adverse possession, therefore, does not arise. Section 11A of the Watan Act provides that on resumption the property shall revert to the Watan. Consequently, the Collector's order directing restoration of the suit lands to the defendant No. 1 who is the officiating Watandar Patil is correct.

6. For the above reasons, the suit fails and must be dismissed with costs.

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Suits:

Bijapur.

For a declaration that the order of the Collector of Bijapur, No. W.T.P. 1016, dated 1st December 1944, is illegal and ultra vires and for consequential injunction and also for possession of the suit lands in case the Plaintiffs are deprived of possession in pursuance of the Revenue Authorities' Order.

GOVERNMENT OF BOMBAY.

Legal Department,
Resolution No. 137
Bombay Castle, 3rd July 1948.

Read Government Resolution, Legal Department, No. 137, dated the 14th April 1948.

Letter from the District Government Pleader, Bijapur, No.532, dated the 8th July 1948, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Bijapur, on 2nd July 1948, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Bijapur.
Civil Suit No.275 of 1947.

Begambi kom Aminsaheb Patel and others ..... Plaintiffs.
Vs.
The Province of Bombay ... Defendants.

"Permitted to withdraw the suit with liberty to bring a fresh suit on the same cause of action. The new suit to be brought within 3 months and on payment of defendants costs."

and forwarding uncertified copy of the order.

RESOLUTION :- The result of the suit is accepted.

By order of the Governor of Bombay,

Signed
R.M. MEHTA,
Assistant Secretary to Government.

Subd for margin.
Orders at Exh A

To

The Revenue Department,
The Commissioner, Senior Division,
The Collector of Bijapur.

Odm
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K. 26

Issued
3/2

S. By 1/45
7-7-45